

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 3734

November 6, 2013

Ms. Corrine Daniels  
Applied Ecological Services, Inc.  
17921 Smith Road  
Broadhead, Wisconsin 53520

Re: Order of Consent  
R4-2013-1009-123

Dear Ms. Daniels:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$2000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: B. Pendell

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation Law  
("ECL") Article 33 and  
Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of  
New York ("6 NYCRR"),

**ORDER ON CONSENT**  
R4-2013-1009-123

-by-

Applied Ecological Services, Inc.  
17921 Smith Road  
Broadhead, Wisconsin 53520

Respondent

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WHEREAS:

1. The New York State Department of Environmental Conservation (DEC) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-301 of the Environmental Conservation Law (ECL), among other authorities. In particular, DEC is and has been responsible for the regulation of the use, and for the enforcement of the provisions of law governing the use of pesticides in the State, pursuant to ECL Article 33 and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 325.
2. Respondent Applied Ecological Services, Inc. is a ecological consulting firm, with an office located at 4278 Albany Street, Albany, New York ("facility").
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On September 19, 2013, Respondent made a pesticide application to a residence located at 35 Turner Lane, Loudonville, New York ("site").
5. On September 19, 2013, Department staff conducted a Business Records, Certified Applicator Records, and Non-Agricultural Use inspection of the site.

First Violation

6. At the time of the September 19, 2013 pesticide application, Respondent applied Aqua Neat (EPA Reg. #228-365) at a rate of 2% solution for the control of phragmites. Aqua Neat label instructions provide that for phragmites control, a rate of 0.75% must be used.

7. Regulations at 6 NYCRR 325.2 (b) provide that “*pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.*”

8. Respondent violated 6 NYCRR 325.2 (b) by failing to follow the label directions with respect to the application rate of Aqua Neat.

#### Second Violation

9. At the time of the September 19, 2013 application, Respondent failed to provide on-site direct supervision of technicians during an aquatic pesticide application.

10. Regulations at 6 NYCRR 325.7 (d)(1)(iv) provide that “*on-site direct supervision is required when technicians:*

*(iv) apply aquatic pesticides to any surface waters of the State classified pursuant to Article 17 of the New York State Environmental Conservation Law, except on-site supervision is not required for permitted applications of microbial pesticides to control aquatic pests as described in paragraph 325.7(a)(7).*”

11. Respondent violated regulations at 6 NYCRR 325.7 (d)(1)(iv) by failing to provide on-site direct supervision of technicians during the September 19, 2013 application.

#### Civil Penalty

12. ECL §71-2901 (1) provides, *inter alia*, that “any person who violates any provisions of Article 33 of that chapter, or any rule, regulation or order issued thereunder, shall be liable for a civil penalty not to exceed \$5,000 for a first violation, and an additional penalty of up to \$10,000 for each subsequent violation.”

#### Waiver of Hearing

13. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. In respect to the aforesaid violation, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) is hereby assessed against the Respondent and shall be payable to the New York State Department of Environmental Conservation by money order or certified check. Payment of the civil penalty is due in accordance with the following schedule:

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for them.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and its representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

IV. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

V. This Order is deemed effective on the date signed by the Department.

VI. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondents for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department or any other third party, provided, however, that Respondent waive all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

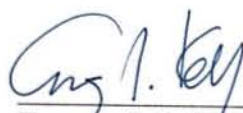
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph IV of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: 11/5, 2013  
Rotterdam, New York

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



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Eugene J. Kelly  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Applied Ecological Services, Inc.

SIGNED: C. J. Daniels  
TITLE: President  
DATE: 10-30-13

STATE OF Wisconsin

COUNTY OF Rock ) ss.:  
)

On the 31<sup>st</sup> day of October in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Corrine Daniels personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Deven A. Peterson  
Notary Public  
Qualified in the County of: Rock  
My Commission Expires: 1/25/15

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

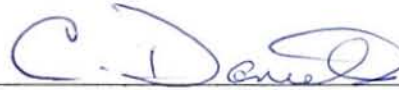
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-by-

Applied Ecological Services, Inc.  
17921 Smith Road  
Broadhead, Wisconsin 53520

Respondent

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I, Corrine Daniels, being duly sworn, do depose and say that I am the Chief Operations Officer of Applied Ecological Services, Inc., and that I have complied with the requirements of paragraph No 1 of the Order on Consent's Schedule of Compliance (R4-2013-1009-123) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me  
On this 31<sup>st</sup> day of October, 2013

Deena A. Fushner

Notary Public

My Commission Expires: 1/25/15